

**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF OKLAHOMA**

JESSIE EARL JAMES,)	
)	
Plaintiff,)	
)	
v.)	No. CIV-12-389-FHS
)	
TOM MONTGOMERY and DONNA DAVIS,)	
)	
Defendants.)	

OPINION AND ORDER

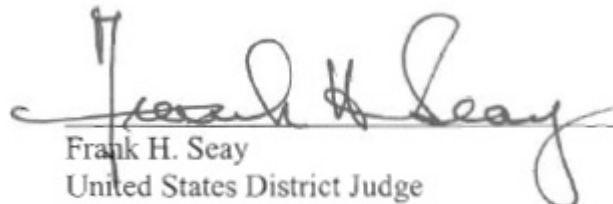
Before the Court for its consideration are the Motions to Dismiss (Dkt. Nos. 14 and 17) filed on behalf of Defendants Tom Montgomery ("Montgomery") and Donna Davis ("Davis"), respectively. Plaintiff's response to Montgomery's Motion to Dismiss was due on February 26, 2013, but no response was filed. Plaintiff's response to Davis' Motion to Dismiss was due on March 5, 2013, but no response was filed. On March 6, 2013, the Court entered an order directing Plaintiff to file a response to Montgomery's Motion to Dismiss by March 11, 2013, and to Davis' Motion to Dismiss by March 18, 2013. The Court informed Plaintiff that his failure to file responses would result in the motions being deemed confessed pursuant to Local Rule 7.1(h). Plaintiff has failed to file responses by the March 11 and March 18, 2013, deadlines. Consequently, the Motions to Dismiss (Dkt. Nos. 14 and 17) are granted as confessed by Plaintiff.

The Court has also conducted an independent review of the motions and concurs with Defendants' arguments. Specifically, the Court finds that dismissal is appropriate as to both Defendants under Rule 12(b)(1) of the Federal Rules of Civil Procedures for the reason that Plaintiff's complaint fails to invoke this Court's

subject matter jurisdiction under either diversity of citizenship jurisdiction or federal question jurisdiction. Additionally, as to Defendant Davis, dismissal is appropriate under Rule 12 (b)(6) of the Federal Rules of Civil Procedure as Plaintiff's complaint fails to state a claim upon which relief can be granted. As to Davis, Plaintiff's complaint does not "contain enough allegations of fact 'to state a claim to relief that is plausible on its face.'" Robbins v. Okla. ex rel. Dep't of Soc. Servs., 519 F.3d 1242, 1247 (10th Cir. 2008)(quoting Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 570 (2007)).

Based on the foregoing reasons, Defendants' Motions to Dismiss (Dkt. Nos. 14 and 17) are granted and this action is ordered dismissed in its entirety.

It is so ordered this 21st day of March, 2013.


Frank H. Seay
United States District Judge
Eastern District of Oklahoma